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THE MALONE FIRM, LLC
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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TZVIA WEXLER,	:	
	:	
Plaintiff,	:	
	:	Civil Action
v.	:	No. 19-5760
	:	
CHARMAINE HAWKINS, et al.	:	
Defendants.	:	

**PLAINTIFF TZVIA WEXLER'S MOTION TO COMPEL THE DEPOSITIONS
OF DEFENDANTS JAMES KOENIG AND KELLY KEENAN**

AND NOW COMES Plaintiff Tzvia Wexler, by and through her attorney, Thomas Malone, Esq., and respectfully sets forth the following:

1. The instant matter was instituted by service of complaint on December 6, 2019. Plaintiff's complaint alleges violation of her First, Fourth, and Fourteenth Amendment rights, Assault and Battery, False Arrest, False Imprisonment, False Light, Pennsylvania Malicious Prosecution and §1983 Retaliatory Prosecution, Pennsylvania Retaliatory Prosecution and §1983 Retaliatory Prosecution.

2. Plaintiff was assaulted by Police and then improperly charged with Assault. After Defendant Hawkins repeatedly shoved Plaintiff and proceeded to choke Plaintiff, she and the co-Defendants conspired to detain and charge Plaintiff with crimes she did not commit. The Philadelphia District Attorney's Office, after Defendant Hawkins testified falsely, moved to dismiss all charges against Plaintiff.

3. By order of March 11, 2020, the initial deadline to complete fact discovery was set at September 11, 2020.

4. Due to the ongoing COVID-19 pandemic, parties have twice stipulated to an extension of the deadline for the completion of fact discovery, first to November 10, 2020, then to the current deadline of February 18, 2021.

5. At their depositions, Defendant Hawkins and Philadelphia Police Officer O'Reilly indicated that their body-worn cameras were recording during the incident. No body-cam footage has been produced to Plaintiff.

6. In the course of attempts to arrange the depositions of the Plaintiff and Officer O'Reilly, wherein Plaintiff's counsel asked for dates on which Defendants Koenig and Keenan were available to be deposed, by email dated February 5, 2021, Defense counsel identified "2/10, 2/11, 2/18" as dates on which Defendant Keenan would be available and "[February] 10, 11, 17, 18" as dates on which Defendant Koenig would be available. See Attachment 1, "Feb 05 21 Email."

7. Based on the representations in the above email, Plaintiff's counsel delivered by email Notices of Deposition directed to Defendant Koenig for February 17 and to Defendant Keenan for February 18. See Attachment 2, "Notices of Deposition."

8. Defendants' counsel subsequently informed Plaintiff's counsel the Defense was no longer available at those dates and times, and Defendant's counsel did not produce the Defendants for the depositions. See Attachment 3, "Feb 15 21 Email."

9. Since today, February 18, 2021, is the close of discovery, Plaintiff would be prejudiced if the depositions did not proceed and the defendants were not questioned under oath.

10. Plaintiff requires the depositions of Defendants Koenig and Keenan to prepare, properly plead her case, and fully understand why she was detained in a cage in a Police wagon and then in

a cell, why the Police did not follow their own Policies and Procedures in conducting the investigation, why the investigators did not endeavor to watch and retain body-worn camera footage, and why Plaintiff was never interviewed as Philadelphia Police Directives require.

WHEREFORE, Plaintiff respectfully requests that the Court enter the attached Order.

The Malone Firm, LLC

By: /s/ Thomas Malone
Thomas Malone, Esq.
Attorney for Plaintiff, Tzvia Wexler

CERTIFICATION OF COUNSEL

The undersigned counsel for movant hereby certifies and attests that he has had the contact described above with opposing counsel regarding the discovery matter contained in the forgoing discovery motion in an effort to resolve the specific discovery dispute at issue and, further, that despite counsel's good faith efforts to resolve the dispute, counsel have been unable to do so.

Date: February 18, 2021

/s/ Thomas Malone
Thomas Malone, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Motion to Compel Discovery to be served upon all counsel of record via the Court's Electronic Filing System (ECF).

Date: February 18, 2021

/s/ Thomas Malone
Thomas Malone, Esq.